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Nos. 83-1386, 83-1721 and 83-1838

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In the Supreme Court of the United States

OCTOBER TERM, 1984

RONALD A. LEGGETT, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

STATE OF MISSOURI, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

NORTH ST. LOUIS PARENTS AND CITIZENS FOR QUALITY EDUCATION, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether in light of *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406 (1977) (*Dayton I*), and *Milliken* v. *Bradley*, 433 U.S. 267 (1977) (*Milliken II*), the court of appeals erred in requiring the State of Missouri to fund a comprehensive interdistrict desegregation remedy in the absence of district court findings sufficient to show that the remedy was "tailor[ed] * * * to fit 'the nature and extent' " (*Dayton I*, 433 U.S. at 420) of the intradistrict violation that the State had been found to have committed.

2. Whether the court of appeals placed improper restrictions on the St. Louis Board of Education's taxing prerogatives in connection with the latter's funding obligations under the desegregation plan.

3. Whether the court of appeals erred in concluding that the desegregation remedy was fair to all members of the plaintiff class.

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OPINIONS BELOW

The opinion of the court of appeals (83-1721 Pet. App. 1a-94a) is not yet officially reported. The opinion of the district court (83-1721 Pet. App. 95a-147a) is reported at 567 F. Supp. 1037. Earlier opinions in the case are reported at 469 F. Supp. 1304 (1979), rev'd, 620 F.2d 1277, cert. denied, 449 U.S. 826 (1980); 491 F. Supp. 351 (1980), aff'd, 667 F.2d 643, cert. denied, 454 U.S. 1091 (1981); 677 F.2d 626, cert. denied, 459 U.S. 877 (1982).

JURISDICTION

The judgment of the court of appeals (83-1721 Pet. App. 148a) was entered on February 8, 1984. The petitions for a writ of certiorari were filed on February 21, 1984, April 20, 1984, and May 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The early history of this school desegregation case is summarized in our Briefs in Opposition in *Missouri* v. *Liddell*, cert. denied, 454 U.S. 1091 (1981) (No. 80-2152), and *Missouri* v. *Liddell*, cert. denied, 459 U.S. 877 (1982) (No. 81-2022). In order to delineate the questions presented here, that history, as well as the proceedings below, must be recapitulated in some detail.

A. The intradistrict phase of the litigation

1. This action was commenced in 1972 by a group of black parents and their children (the Liddell group) against the Board of Education of the City of St. Louis and its officials (the City Board). The complaint alleged that the City Board had maintained and perpetuated an unconstitutional dual system of public education within St. Louis. A second group of black parents (the Caldwell group), the

City of St. Louis, and the United States intervened as plaintiffs. The State of Missouri, the State Commissioner of Education, and the State Board of Education (the State parties) were joined as defendants. Following a trial, the district court held that defendants had not committed any constitutional violation. *Liddell* v. *Board of Education*, 469 F. Supp. 1304 (E.D. Mo. 1979) (Meredith, J.). It concluded that the City school system, although originally operated as part of a de jure state segregated system, had become unitary through the City Board's adoption of a "neighborhood school" policy (469 F. Supp. at 1313-1314, 1318).

The court of appeals reversed, holding that the State and the City Board had jointly maintained a segregated school system in St. Louis. *Adams* v. *United States*, 620 F.2d 1277 (8th Cir.) (en banc), cert. denied, 449 U.S. 826 (1980). It found that the State had statutorily mandated separate schools until 1954, and that neither the State nor the City Board had taken effective steps to desegregate the City schools thereafter (620 F.2d at 1280-1281). It held that implementation of the "neighborhood school" plan had not disestablished the dual system (*id.* at 1280-1288) and that the City Board's policies since 1954 had aggravated existing segregation (*id.* at 1288-1291). The court required the City Board "to develop a system-wide plan for integrating the [City] schools," the costs of that plan to "be apportioned among the defendants as determined by the district court" (*id.* at 1295 & n.28). The court of appeals also suggested that the City Board investigate "other techniques" to remedy segregation within St. Louis, including the possibility of developing a voluntary program for "exchanging and transferring students with

the suburban school districts of St. Louis County" (*id.* at 1296).

2. On remand, the district court held that the State and the City Board were "jointly and severally liable" for segregation in the St. Louis schools. *Liddell* v. *Board of Education*, 491 F. Supp. 351, 357 (E.D. Mo. 1980) (Meredith, J.). It found that the State, "which prior to 1954 mandated school segregation, never took any effective steps to dismantle [that] dual system" (*id.* at 357). It accordingly concluded that the State parties were "primary constitutional wrongdoers who have abdicated their affirmative remedial duty" to "obliterate all vestiges of * * * state-imposed segregation" (*id.* at 359). By way of remedy, the court approved a comprehensive intradistrict desegregation plan, and ordered that the State pay half its cost (*id.* at 353, 357). The court also ordered, in paragraph 12(a) of its decree, that the City Board, the State, and the United States "make every feasible effort to work out with the appropriate school districts in the St. Louis County * * * a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis" (*id.* at 353).

The court of appeals affirmed. *Liddell* v. *Board of Education*, 667 F.2d 643 (8th Cir. 1981). It agreed with the district court's conclusion that the State parties were "primary constitutional wrongdoers" and found no abuse of discretion in the district court's ordering the State to pay half the cost of the intradistrict plan (667 F.2d at 655). It also rejected the State's challenge to paragraph 12(a) of the decree, a challenge predicated on the fact that "the suburban school districts [had not been] joined as parties" (667 F.2d at 650). The court noted that the State had

been ordered only to "make every feasible effort" to work out a voluntary interdistrict plan, that paragraph 12(a) "must be viewed as a valid part of the attempt to fashion a workable remedy within the City," and that, "[b]ecause the plan [was] to be voluntary," no question of enforcement was involved (*id.* at 651).

The State petitioned for certiorari, contending that it was not responsible for school segregation in St. Louis, that it should not have been ordered to fund any part of the intradistrict plan, and that paragraph 12(a) of the decree exceeded the district court's remedial authority (80-2152 Pet. 5, 12, 20). On the latter point, the State argued that, under *Milliken* v. *Bradley* (*Milliken I*), 418 U.S. 717 (1974), it could not be required to help develop a voluntary interdistrict plan absent the finding of an interdistrict violation (80-2152 Pet. 20-24). The United States opposed certiorari. We noted that a State may properly be ordered "to pay part of the costs of desegregation" where it has "abdicat[ed] [its] affirmative duty to disestablish the *de jure* system for which [it] bear[s] responsibility" (80-2152 Br. in Opp. 13). And we noted that, while *Milliken I* "prohibits the imposition of relief upon nonparty school districts," a court may permissibly "order those who have been found liable to make efforts to persuade those nonparty districts to cooperate voluntarily" (80-2152 Br. in Opp. 14 & n.17 (emphasis omitted)). Certiorari was denied (454 U.S. 1091 (1981)).

3. While the State's Petition in No. 80-2152 was pending, the district court (Hungate, J.) held hearings on the proposals submitted in response to paragraph 12(a) of its decree. On July 2, 1981, it approved a 12(a) plan for voluntary student exchanges between the City and the suburban school districts

(81-2022 Pet. App. A73-A108). The plan included fiscal and educational incentives designed to encourage students and suburban school districts to participate; participation was voluntary on the part of both. The district court concluded that the plan was "directly related to remedying racial segregation in St. Louis" and that it was "conducive to obtaining a proper level of constitutional compliance" by the State (*id.* at A106, A108). Fifteen suburban districts and approximately 1,200 students eventually agreed to take part in the 12(a) plan (83-1721 Pet. App. 23a, 112a). The State was ordered to pay the cost of this plan in full (81-2022 Pet. App. A102-A103).

The court of appeals affirmed. *Liddell* v. *Board of Education*, 677 F.2d 626 (8th Cir. 1982). It noted its previous holding that the State "had substantially contributed to the segregation of the public schools of the City of St. Louis" (677 F.2d at 629 (footnote omitted)). And it held that "[p]aragraph 12(a) [was] entirely enforceable against the state defendants" because they were "primary constitutional wrongdoers and, therefore, [could] be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district" (*id.* at 630 (citing *Hills* v. *Gautreaux*, 425 U.S. 284 (1976)).

The State again petitioned for certiorari, contending that it could not under *Milliken I* be required to bear the cost of the 12(a) plan absent a finding that it had committed an interdistrict violation (81-2022 Pet. 7-13). It noted that it had been found liable only for an intradistrict (city-wide) violation and that the 12(a) plan, while voluntary as to the suburban districts, was involuntary as to it. The United States

again opposed certiorari. We noted that "[t]he 12(*c*) plan was part of the district court's effort to remedy segregation within the City of St. Louis" and that, under *Hills* v. *Gautreaux*, *supra*, the State parties could be "required to take appropriate remedial action for the constitutional violations in which they participated" (81-2022 Br. in Opp. 8 & n.10). Certiorari was denied (459 U.S. 877 (1982)).[1]

B. The interdistrict phase of the litigation

1. While these appeals were pending, the trial court began proceedings to consider plaintiffs' charges of interdistrict violations. Although no interdistrict violations had been found, paragraph 12(c) of the original decree had, anticipatorily, ordered the City Board and the State to develop a "feasibility plan" of interdistrict relief designed "to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis *and St. Louis County*" (677 F.2d at 629 & n.2, 639; 491 F. Supp. at 353) (emphasis supplied). Paragraph 12(c), unlike paragraph 12(a), envisioned a plan in which participation by suburban school districts would be mandatory rather than voluntary, and in which county-wide, as well as city-wide, school segregation would be addressed.

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[1] The State's Petition in No. 81-2022 also contended (Pet. 13-23) that the court of appeals had erred in upholding the district court's adoption of a plan for merging the vocational education programs of the city and county schools—referred to as "the 12(b) plan"—based on a finding that the State had violated the Constitution "by failing to merge [those] segregated * * * programs" earlier (677 F.2d at 628, 632). Certiorari was likewise denied on that issue (459 U.S. 877) and no question concerning the vocational education programs is presented here.

Pursuant to paragraph 12(c), the Caldwell plaintiffs moved to join as additional parties defendant the 23 suburban school districts in St. Louis County (83-1721 Pet. App. 138a-139a; C.A. App. 7, 93-94). The Caldwell group likewise moved to amend its complaint to allege that the State and the suburban districts had established, with segregative intent, "a racially dual system of public education in the St. Louis metropolitan area" (C.A. App. 7, 89; 83-1721 Pet. App. 139a-140a). The St. Louis metropolitan area was defined to include the City of St. Louis, St. Louis County, and two adjoining counties (83-1721 Pet. App. 140a). The City Board simultaneously moved to realign itself as plaintiff and likewise alleged interdistrict violations requiring interdistrict relief (C.A. App. 1-2, 53-85; 83-1721 Pet. App. 138a-140a). The district court (Hungate, J.) granted these motions in substantial part (C.A. App. 47-52; 83-1721 Pet. App. 138a-139a) and certified the Caldwell plaintiff class "as comprising all students, and their parents, now attending or who will attend Missouri public * * * schools located in the metropolitan St. Louis * * * area" (83-1721 Pet. App. 142a).[2]

To support their charges of interdistrict segregation, plaintiffs alleged that the State and the suburban districts, separately or in conjunction with one another, had engaged in discriminatory funding decisions, discriminatory housing and land use policies,

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[2] Various appeals were filed from the district court's orders joining certain suburban school districts as defendants and staying proceedings against others. The Eighth Circuit in its 1982 decision held that it lacked jurisdiction of these appeals and of other interlocutory appeals filed in the interdistrict phase of the case (677 F.2d at 639, 640-641).

failures or refusals to consolidate school district boundaries, discriminatory school closings, gerrymandering of attendance areas, discriminatory pupil transportation, discriminatory faculty assignments, and discriminatory allocation of resources (83-1721 Pet. App. 139a-140a; C.A. App. 79). Defendants denied these allegations (83-1721 Pet. App. 141a). In March 1982, the district court, reversing the normal procedure, held hearings to determine what remedy it would impose in the event that it should find an interdistrict violation (C.A. App. 108-109). It declared that it would adopt a "mandatory interdistrict plan" which would dissolve the suburban districts and create a single metropolitan school district with an area-wide student transportation system (83-1721 Pet. App. 19a; C.A. App. 111-118). The court then scheduled a trial to determine whether any interdistrict violations had in fact occurred (83-1721 Pet. App. 142a).

2. No hearing on interdistrict liability took place. On the eve of trial, the original plaintiffs, the City Board, and the suburban school districts entered into an agreement "to settle the litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims" (83-1721 Pet. App. 151a). The agreement was expressly made contingent on a court order establishing adequate funding (*id.* at 223a), and specified that funding should come from the State and the City Board (*id.* at 224a-226a). Neither the United States nor the State was a party to the settlement agreement.

The agreement aimed to settle plaintiffs' interdistrict claims without resort to court-ordered busing and without destroying the integrity of the 23 suburban districts (83-1721 Pet. App. 227a). It has three main components:

a. *Voluntary Interdistrict Transfers.* The interdistrict transfer plan is generally designed to encourage black students from the City to transfer voluntarily to suburban schools, and to encourage white students from the suburbs to transfer voluntarily to City schools. The transfers are to be facilitated by magnet school programs that are intended "[t]o provide broader educational opportunities to students in the metropolitan area" and "[t]o increase the desegregation of the schools in the [St. Louis] Metropolitan area" (83-1721 Pet. App. 173a). Each suburban district is generally required, over a five-year period, to increase its minority enrollment by 15%, or to 25%, whichever is less (*id.* at 159a-166a). It is expected that about 15,000 students will transfer from the City to the suburbs, and about 3,000 students from the suburbs to the City (*id.* at 23a, 153a).

b. *Quality Education Improvements.* These are designed to enhance the quality of education in all City schools, with the general objective of enabling the system to retain an AAA rating under standards set by the Missouri Department of Education (83-1721 Pet. App. 54a, 247a). The agreement mandates, among other things, a reduction in class size to a 25:1 pupil-teacher ratio (*id.* at 185a); provision of audio-visual services (*id.* at 247a); restoration of art, music, and physical education courses (*id.* at 249a); development of programs to promote computer literacy and career education (*id.* at 192a); hiring of additional school nurses, social workers, psychologists, and athletic coaches (*id.* at 250a, 262a); establishment of all-day kindergartens and pre-school centers (*id.* at 252a); expansion of services for handicapped students (*id.* at 250a); establishment of programs to improve science instruction (*id.* at 249a); and expan-

sion of the "English as a second language" program (*id.* at 260a). The quality education component of the settlement also includes special programs targeted to all-black City schools, such as a further reduction in class size (to a 20:1 pupil-teacher ratio), after-school classes, Saturday instruction, peer tutoring, summer schools, parental involvement and "role model" programs (*id.* at 197a-200a, 242a-243a).

c. *Capital Improvements.* The settlement agreement recites that "[t]he general condition of the St. Louis Public School facilities is one of rapid deterioration, extreme deferred maintenance, and general old age" (83-1721 Pet. App. 193a). It notes that in recent years "the cost of [critically needed facilities] invariably exceeded [the City Board's] funding capacities," a shortfall exacerbated by voters' repeated refusals to ratify school bond issues (*id.* at 281a-282a). The agreement accordingly mandates a program of deferred maintenance and a "comprehensive program of general renovations, associated program improvements, and modernization" of the City schools (*id.* at 283a).

3. The signatory parties—the Liddell and Caldwell plaintiffs, the suburban school district defendants, and the City Board—presented the settlement agreement to the district court for approval (83-1721 Pet. App. 103a). The court held a hearing to determine whether the agreement met the standards for approving class action settlements under Fed. R. Civ. P. 23, that is, whether the agreement was "fair, reasonable and adequate for the resolution of the 12(c) interdistrict phase" of the case (83-1721 Pet. App. 103a, 143a-144a). The court made no inquiry into the merits or substantiality of plaintiffs' allegations of interdistrict violations by the suburban districts and the State, or into the relative strength of those charges. Nor did the court inquire whether the

State's intradistrict violation had any interdistrict effects.

The district court (Hungate, J.) approved the plan without substantial modification (83-1721 Pet. App. 95a, 108a-119a) and declared that primary responsibility for funding it would rest with the State and the City Board, the "parties who ha[d] been adjudicated as liable * * * for segregated conditions within the City's public schools" (*id.* at 128a). The State was ordered to bear the full cost of implementing the interdistrict transfer plan and the magnet schools (*id.* at 96a-97a). The State was ordered to bear the full cost of implementing the quality education program outside St. Louis and half the cost of that program within St. Louis (*id.* at 96a-97a). And the State was ordered to bear half the initial costs of implementing the city-school capital improvements program, being required to match "[a]ny amount raised for capital expenditures by [the] City Board through a voter-approved bond issue at any time during 1983-1984" (*id.* at 97a, 127a). Estimates of the settlement's first-year cost ranged from $37 million to over $100 million (*id.* at 128a). The State's share for the 1984-1985 school year is estimated to be $49 million (*id.* at 87a). The suburban school districts were not required to pay anything (see *id.* at 20a).

The City, the State parties, and the United States objected to these funding provisions, contending that they exceeded the scope of the intradistrict violation shown on the record (83-1721 Pet. App. 105a, 113a). The district court rejected these arguments. It concluded that it "ha[d] the authority to order the State * * *, which has already been adjudicated a primary constitutional violator in causing school segregation in the City * * *, to fund the voluntary interdistrict transfers and [the] improvements in the quality of education * * * in order to further remedy the State

defendant's constitutional violations" (*id.* at 129a). And it concluded that it "ha[d] the authority to order the City Board, already adjudged a constitutional violator, to increase its tax rate, if necessary" to fund its share of the agreement's cost (*id.* at 129a-130a). Although the Court did not order an immediate property tax increase, it ordered the City Board to submit a new bond issue to the voters (*id.* at 97a) and enjoined a scheduled reduction in the City Board's tax rate (*id.* at 130a, 133a-134a).

4. A divided court of appeals, sitting en banc, affirmed the district court's order in substantial part (83-1721 Pet. App. 1a-94a). In the majority's view, the settlement agreement, although drafted in response to plaintiffs' allegations of interdistrict segregation by both the State and the suburban districts, also served in large measure to remedy the State's proven intradistrict violation. The court thus held that the State could be required to fund the bulk of the plan even though it was not a party to the settlement and even though it had not been found to have committed any interdistrict wrong.

a. The majority viewed the interdistrict transfer plan as "intrinsic to an effective remedy for the [State's] intradistrict violation" (83-1721 Pet. App. 25a). Because "[t]he potential for integration within [St. Louis] was limited by the fact that almost eighty percent of the students were black," interdistrict transfers, in the majority's view, were necessary to "return[] the largest number of victims to integrated schools" (*id.* at 32a, 34a). The court rejected the contention, advanced by Missouri and by the United States (*id.* at 22a), that the district court's factual findings were insufficient to support the remedy it decreed. Rather, the court of appeals concluded that the interdistrict transfer plan "was closely

tailored to the nature and scope of the violation" (*id.* at 31a), noting that "the State's presence in public education [was] immense" and that the State had previously maintained a de jure dual school system (*id.* at 32a). The court held that "the remedial limits imposed by *Dayton Bd. of Educ.* v. *Brinkman* [*Dayton I*], 433 U.S. 406 (1977), [were] inapposite to this case," reasoning that "[t]he findings of *de jure* segregation which distinguish this case were absent" in *Dayton I* (83-1721 Pet. App. 32a n.10).[3]

The court also affirmed the funding order respecting many of the agreement's quality education provisions. It noted that such programs may be "proper components of a desegregation remedy so long as they relate to the constitutional violation, are remedial in nature, and [respect] local autonomy" (83-1721 Pet. App. 46a, citing *Milliken* v. *Bradley* (*Milliken II*), 433 U.S. 267, 280-281 (1977)). The court concluded that these conditions were met in the case of programs targeted to the City's all-black schools (83-1721 Pet. App. 52a), programs "necessary to the city schools to retain [the system's] AAA rating" (*id.* at 56a),[4] and programs involving "preschool cen-

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[3] Besides upholding the city-to-suburbs and suburbs-to-city student transfer plan, the court of appeals agreed that the State, given its "status as a violator of the Constitution" (83-1721 Pet. App. 43a), could properly be required "to pay the full capital and operating costs of magnet schools" in St. Louis. But the court reversed as remedially unjustified the district court's order that the State pay the costs of magnet schools in the suburbs (*id.* at 44a) and of the suburb-to-suburb student transfers (*id.* at 38a-39a). The suburb-to-suburb transfer plan involved 304 students (*id.* at 24a).

[4] Such programs included library and media services, audio-visual services, reduction in class size, and restoration of art, music, and physical education programs (83-1721 Pet. App. 56a).

ters, planning and program development, all-day kindergarten, parental involvement, desegregation planning, long-range planning, and public affairs" (*ibid.*). These programs, in the court of appeals' view, were needed "to overcome the inequalities inherent in dual school systems" (*id.* at 46a) and "to enhance the appeal of the city school system, thereby promoting the chances of a stable and successful voluntary desegregation plan" (*id.* at 47a). The court held that the State could properly be required to pay half the cost of the enumerated programs, rejecting its argument that the district court had erroneously "approved funding for general education improvements * * * unrelated to desegregation" (*id.* at 50a). But the court found "[in]adequate support in the record" for the other quality education programs in the settlement agreement, concluding that they had not been shown to be "essential as remedial or compensatory" (*id.* at 56a).

Finally, the court upheld the capital-improvement aspects of the settlement. It concluded that the State "had an obligation to pay one-half of the costs of [a] program necessary to restore the city [school] facilities to a constitutionally acceptable level" (83-1721 Pet. App. 58a-59a). And it sustained the City Board's funding obligations as to the other half of the costs, while disagreeing with the district court's orders directing precisely how that money should be raised.[5]

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[5] Specifically, the court of appeals found error in the district court's injunction against the scheduled property tax reduction (83-1721 Pet. App. 65a-66a) and ruled that future orders affecting the City Board's tax rate should be entered only if accompanied by factual findings "that all other fiscal alternatives were unavailable or insufficient" (*id.* at 66a). To avoid

b. Judge Gibson concurred in part and dissented in part (83-1721 Pet. App. 73a-86a). While believing that the settlement plan was "an inspired and far reaching one" (*id.* at 86a), he concluded that the majority in two respects had "improperly require[d] the State to fund a remedy far broader than [the] constitutional violation" (*id.* at 73a). Under this Court's decisions, he noted (*id.* at 77a-78a), "a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation' " (*Hills* v. *Gautreaux*, 425 U.S. at 293-294 (quoting *Milliken I*, 418 U.S. at 744)). Although "the nature of the constitutional violation by the State of Missouri ha[d] been outlined only most generally" in the litigation thus far (83-1721 Pet. App. at 73a), that violation, Judge Gibson observed, was "at most intradistrict in nature," and there was "no hint of a finding that there was an interdistrict effect flowing from [it]" (*id.* at 79a). Because the trial court had found no interdistrict violation and had made "no findings * * * as to the extent of the remedy required" to redress the intradistrict violation, Judge Gibson concluded that the record neither demonstrated the need for a comprehensive interdistrict transfer plan nor justified imposition of its cost upon the State (*ibid.*).

Judge Gibson also dissented from the majority's holding that the State must "participat[e] in funding capital improvements" within the St. Louis school system (83-1721 Pet. App. 84a). While acknowledging that the majority had "correctly describe[d] the age, deterioration, and deferred maintenance" of the

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"serious[] disrup[tion of] St. Louis' system of school finance," however, the court permitted the injunction to remain in place for the balance of the 1983-1984 school year (*id.* at 60a).

system's physical plant, he noted that there was "no finding in the district court order [that these conditions were] related in any way to the constitutional violations of either the City Board or the State" (*id.* at 83a, 84a). Indeed, "[t]here [was] nothing to suggest that the[se] condition[s] [were] other than purely and simply the result of the neglect of the City Board to fulfill its responsibilities" under local law to maintain the schools properly (*id.* at 84a). Under these circumstances, Judge Gibson concluded, "[t]o order the State to pay half of this expense is to require a remedy beyond the constitutional wrong that has been found" (*ibid.*).

c. Judge Bowman dissented (83-1721 Pet. App. 87a-94a). He agreed with Judge Gibson that the record did not support "the interdistrict aspects of the remedy" or "the requirement that the State provide funding for capital improvements" (*id.* at 87a). But he also found the record inadequate to justify compulsory State funding "for the array of costly programs" required by the settlement's quality education provisions (*ibid.*). However laudable such amenities might be "from an educational standpoint," Judge Bowman said, the district court had authority to impose them only if they were "tailored to the incremental segregative effects that have been caused by the Constitutional violation" (*id.* at 87a-88a). The record in the case, Judge Bowman concluded, gave the court of appeals "no basis for an intelligent and principled determination" as to whether the programs approved by the district court reflected "Constitutional necessity" or amounted to a mere "judicial excursion into policy-making and educational experimentation" (*id.* at 88a).

Judge Bowman emphasized that a district court under *Dayton I* must make factual findings sufficient

to show that the remedy it decrees does no more than "restore the students in the affected school district 'to the position they would have occupied in the absence of' " the constitutional violation (83-1721 Pet. App. 90a (quoting *Milliken II*, 433 U.S. at 280)). In this case, Judge Bowman observed, the desegregation plan was not "fashioned by the district court after careful findings of fact of the kind required by" *Dayton I*. Rather, it was "fashioned by agreement of the City [Board], the suburban school boards, and the plaintiffs," whereas the State, "which must bear the brunt of the costs," had not agreed to the settlement (83-1721 Pet. App. 88a-89a).

"The process by which the settlement plan came into being," Judge Bowman pointed out (83-1721 Pet. App. 92a), "underscores the need for careful fact-finding before imposing * * * its burdensome costs upon the State." He noted that the agreement was "intended to settle the broad interdistrict claims in [the] case" and that "it would be a most remarkable coincidence if a plan [so designed] was at the same time properly tailored to cure only the effects of the intradistrict violation" (*ibid.*). He stressed that "the negotiations leading to the plan largely excluded the State," that the suburban school districts "stood to reap substantial benefits" from the settlement without putting up any money, and that "[n]one of them had any real incentive to prevent the others from piling their plates high with programs and funds" at the State's expense (*ibid.*). "Such negotiations," Judge Bowman concluded, "are inherently unlikely to produce a remedy narrowly tailored to the Constitutional wrong and any present-day educational deficiencies resulting therefrom" (*ibid.*). He would thus have reversed the district court's judgment and

remanded for further factual findings (*id.* at 93a-94a).

DISCUSSION

Unlike many school desegregation remedies, which rely to a greater or lesser degree on mandatory busing and other coercive measures, the plan approved by the district court here seeks to accomplish desegregation by creating incentives for voluntary integrative student transfers. The plan was developed in a spirit of reasonableness and compromise. The negotiations that produced it were free of the racial animus that often hobbles desegregation efforts. In these respects, the plan in Judge Gibson's words is indeed "an inspired and far reaching one" (83-1721 Pet. App. 86a). As a forward-looking attempt to accomplish stable and lasting desegregation—a result that has often eluded programs placing greater reliance on coercive techniques—the plan has much to commend it.

It is thus with considerable reluctance that we must note error in the decision below. The court of appeals, in our view, has exceeded the proper limits of federal judicial power by allocating in an inequitable manner the costs of remedying racial segregation in the St. Louis metropolitan area. In so doing, it worked a serious injustice against the State. The State of Missouri, without its consent, has been ordered to bear the cost of a comprehensive interdistrict remedy whose scope—based on the record before the court of appeals—cannot possibly be called "commensurate to the * * * violation[]" (*Dayton I*, 433 U.S. at 417) that the State was found to have committed. The court of appeals erred in approving that remedy, and its error is due chiefly to misapprehension of the principles laid down by this Court in *Dayton I*.

1. "The controlling principle consistently expounded" in this Court's school desegregation decisions "is that the scope of the remedy is determined by the nature and extent of the constitutional violation" (*Milliken I*, 418 U.S. at 744, citing *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 16 (1971)). Accord, *Hills* v. *Gautreaux*, 425 U.S. at 293-294. Thus, while a federal court has the "duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future" (*Louisiana* v. *United States*, 380 U.S. 145, 154 (1965)), judicial remedial powers may "be exercised only on the basis of a violation of the law and [may] extend no further than required by the nature and the extent of that violation" (*General Building Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375, 399 (1982)). The Court has repeatedly emphasized that "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" (*Milliken II*, 433 U.S. at 282). In other words, "it must always be shown that the constitutional violation caused the condition for which remedial programs are mandated" (*id.* at 286 n.17).

In *Dayton I*, this Court clarified the responsibilities of the lower courts to demonstrate, through careful findings of fact, that their remedial decrees comport with these limitations on federal equity power. The Court "granted certiorari to consider the propriety of [a] court-ordered [school desegregation] remedy in light of the constitutional violation which [had been] found by the courts below" (433 U.S. at 409 (citation omitted)). The court of appeals had imposed a comprehensive systemwide remedy based on the district court's finding of "isolated but repeated

instances of failure by the [City] School Board to [bring about] an integrated school system" (*id.* at 410 (original quotation marks omitted)).

This Court held that the district court's findings gave the court of appeals "no warrant * * * for imposing the systemwide remedy which it apparently did" (433 U.S. at 417), a remedy that was "entirely out of proportion to the constitutional violations found by the District Court" (*id.* at 418). This Court emphasized that the relationship between remedy and wrong in desegregation cases "must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles" (*id.* at 410). "Once a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation" (*id.* at 420 (original quotation marks omitted)). The responsibility for making the necessary factual findings rests with "[t]he District Court[] in the first instance" (*id.* at 419). The Court acknowledged that it "is a difficult task * * * to make the complex factual determinations" needed to tailor a proper remedy in school desegregation cases, but concluded that such fact-finding was precisely "what the Constitution and our cases call for" (*id.* at 420). The Court held that "the disparity between the evidence of constitutional violations and the sweeping remedy finally decreed requires supplementation of the record and additional findings addressed specifically to the scope of the remedy" (*id.* at 419).

The court of appeals below concluded that "the remedial limits imposed by [*Dayton I*] are inapposite to this case," reasoning—with apparent reference to the statutorily-mandated dual school system prevalent in St. Louis until 1954—that "[t]he find-

ings of *de jure* segregation which distinguish this case were absent" in *Dayton I* (83-1721 Pet. App. 32a n.10). Although the full import of the court of appeals' statement is not entirely clear, the statement is incorrect as it stands. It may well be, of course, that a district court, in the case of a long-entrenched dual school system, will not find it easy to conduct the factual investigation that *Dayton I* contemplated, *i.e.*, to "determine how much incremental segregative effect" the violation has had on the racial distribution of the school population (433 U.S. at 420).[6] The "incremental segregative effect" formula, however, was simply an application to the facts of *Dayton I* of general remedial principles enunciated by the Court earlier and reaffirmed in that case. In this sense, "the remedial limits imposed by [*Dayton I*]" (83-1721 Pet. App. 32a n.10) are not confined to cases of isolated violations, or even to cases of school desegregation generally, but are "fundamental limitations on the remedial powers of the federal courts" (*General Building Contractors*, 458 U.S. at 399 (quoting *Hills* v. *Gautreaux*, 425 U.S. at 293)). This Court reaffirmed the applicability of those limitations to cases of officially-maintained dual school systems in *Columbus Board of Education* v. *Penick*, 443 U.S. 449, 456-457 & n.5, 465-466 (1979), noting that *Dayton I* had "reiterated the accepted rule that the remedy imposed by a court of equity should be commensurate with the violation ascertained" (443 U.S. at 465). Although the extent of the violation shown on the record in *Dayton I* differs from that here, the *principles* of *Dayton I*—particularly its requirement

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[6] The record before this Court in *Dayton I* revealed only isolated instances of segregative activity. See 433 U.S. at 410 and pages 20-21, *supra*.

that desegregation remedies be predicated on careful and detailed findings of fact—are fully applicable in this case.

2. We agree with the dissenters below that the district court failed to make the kind of factual findings required by *Dayton I*, and that the court of appeals, in the absence of such findings, erred in approving against the State the remedy that it did. The only constitutional violation the State has been found to have committed is an intradistrict violation—the failure to dismantle the dual school system in the City of St. Louis. In earlier stages of the litigation (see pages 4-6, *supra*), the State was ordered to right that wrong by funding half the cost of a systemwide plan (involving mandatory intradistrict transfers and remedial education programs) and by funding the full cost of the 12(a) plan (involving voluntary interdistrict transfers and additional remedial programs). The district court found that these measures were "directly related to remedying racial segregation in St. Louis" and were "conducive to obtaining a proper level of constitutional compliance" by the State (81-2022 Pet. App. A106, A108).

The remedy involved here, by contrast, was decreed in the interdistrict phase of the case, and was designed to settle plaintiffs' charges of interdistrict violations, not only by the State, but also by the 23 suburban districts. Since the State did not consent to that settlement, funding responsibilities could be imposed upon it only if its liability was first determined. The district court, however, made no finding that the State had committed any interdistrict violation, or that the State's intradistrict violation had any interdistrict effects (see *Milliken I*, 418 U.S. at 745). It made no finding as to the relative strength

of plaintiffs' charges against the suburban districts and the State. And it made no finding that there existed any other circumstances warranting imposition on the State of remedial costs beyond those it had already been ordered to bear in the intradistrict phase of the suit. The district court, in short, made no findings that could enable it to "tailor 'the scope of the remedy' to fit 'the nature and extent' " (*Dayton I*, 433 U.S. at 420) of the State's intradistrict violation, the only constitutional violation the State had been found liable for. The "scope of the remedy," rather, was dictated by other parties to the lawsuit, who alleged (or faced allegations of) interdistrict wrongdoing, in a settlement to which the State did not consent, and in circumstances that created no incentives at all to "tailoring" the remedy against the State.

Besides failing to make the necessary findings, the district court did not even conduct the type of proceeding that would have afforded the State a realistic chance to be heard concerning the remedial costs that it could properly be forced to bear. The only hearing the district court held in this respect was a hearing to determine whether the settlement met the standards for approving class action settlements under Fed. R. Civ. P. 23, and this hearing focused almost exclusively on the settlement's fairness to the plaintiff class (see 83-1721 Pet. App. 108a-119a). Although the State was permitted to voice objections to the funding obligations proposed to be placed upon it (*id.* at 113a), the hearing was not designed to permit a defense against plaintiffs' charges of interdistrict wrongdoing. And the State was given no opportunity to build a record concerning the extent of its intradistrict constitutional violation, the effects flowing from that violation, or the magnitude of the cost that

it could reasonably be expected to bear in order to correct its wrong.[7]

The court of appeals attempted to salvage the settlement by paring away some of its more extravagant growth. But while that court could offer its conclusions that there was "adequate support in the record" for some provisions (*e.g.*, 83-1721 Pet. App. 54a, 55a) and that "the record [did not] sufficiently support[]" others (*e.g.*, *id.* at 44a, 56a), those conclusions are no substitute for careful findings of fact by "[t]he District Court[] in the first instance" (*Dayton I*, 433 U.S. at 419). This Court emphasized in *Dayton I* that an appellate court is not at liberty to fill by intuition the gaps in a record; it may set aside "the findings of the district court [as] clearly erroneous" or it "may accept that court's findings of fact but reverse its judgment because of legal errors"

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[7] The district court sought to rationalize its order that the State fund the settlement by asserting that "[t]he sole purpose for the expenditure of funds * * * is to carry out the constitutional responsibility to remove the vestiges of a segregated school system," and that "[i]n no way should any funding provisions * * * be construed to authorize expenditures unrelated to the City Board's desegregation obligations under the Constitution" (83-1721 Pet. App. 128a-129a). But these unsupported conclusions do not amount to the "complex factual determinations" mandated by *Dayton I* as a predicate for such sweeping relief (see 433 U.S. at 420), and a comparison with the record before the Court in *Milliken II* highlights this inadequacy. The district court there had made extensive and elaborate findings to demonstrate that each component of the desegregation plan was "essential for a school district undergoing desegregation" (402 F. Supp. 1096, 1118 (E.D. Mich. 1975), aff'd 540 F.2d 229 (6th Cir. 1976), aff'd 433 U.S. 267 (1977)), and this Court said that the record compelled it "to conclude that the decree before [it] was aptly tailored to remedy the consequences of the constitutional violation" (433 U.S. at 287).

(433 U.S. at 417-418). Here, as in *Dayton I*, "the Court of Appeals did neither" (*id.* at 418).[8]

3. Because it lacked the factual findings called for by *Dayton I*, the court of appeals erred in approving as a remedy against the State, and in ordering the State substantially to fund, each of the three major components of the settlement agreement—the interdistrict transfer plan, the quality education provisions, and the capital improvements program:

a. The court of appeals concluded that the interdistrict transfer plan "was closely tailored to the nature and scope" of the intradistrict violation that the State had earlier been found to have committed (83-1721 Pet. App. 31a). It based this conclusion, not upon its review of facts in the record or of any findings by the district court based on that record, but upon the propositions that "the State's presence in public education is immense" and that the State had failed to dismantle the dual school system in St. Louis (*id.* at 32a). This was not the sort of remedial review procedure that *Dayton I* prescribes.

Aside from the absence of trial court findings, the circumstances under which the interdistrict plan was developed should have suggested to the court of appeals that the plan was not in fact "closely tailored to the nature and scope" of the State's intradistrict violation. That plan was intended to settle plaintiffs' interdistrict claims, and, as Judge Bowman aptly said, "it would be a most remarkable coincidence if a plan [so] intended * * * was at the same time prop-

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[8] This case, like *Dayton I*, may be "every bit as important for the issues it raises as to the proper allocation of functions between the district courts and the courts of appeals within the federal judicial system" (433 U.S. at 409) as it is for the substantive remedial questions it presents.

erly tailored to cure only the effects of the intradistrict violation" previously found (83-1721 Pet. App. 92a). The plaintiff class was defined by reference to the St. Louis metropolitan area (*id.* at 142a), and the agreement recites that the purpose of including magnet schools was "[t]o increase the desegregation of the schools in the [St. Louis] Metropolitan area" (*id.* at 173a). The settlement plan, finally, was negotiated by the 23 suburban school districts who were the State's co-defendants and who, like the State, had been charged with intradistrict and interdistrict violations. The settlement they negotiated virtually absolved them of liability while requiring them to pay nothing. These circumstances again should have suggested to the court of appeals that the financial burden of the interdistrict transfer plan was not "closely tailored" to remedy a violation *by the State*, much less to remedy the *intradistrict* violation that the State had previously been found to have committed.

For these reasons, the court of appeals had no basis in the record for ordering the State to fund any part of the interdistrict transfer plan, beyond the limited part of the plan that merely subsumed the remedial obligations imposed on the State in earlier stages of the litigation. The district court had found that the remedial measures previously imposed were "conducive to obtaining a proper level of constitutional compliance" by the State (81-2022 Pet. App. A106). In the absence of proof that the State had committed an interdistrict violation, that its proven intradistrict violation had interdistrict effects, or that the previously-ordered remedial measures were demonstrably inadequate, the court of appeals lacked authority to require the State to fund a settlement designed to achieve desegregation throughout the St.

Louis metropolitan area. See *Milliken I*, 418 U.S. at 745.

b. The absence of adequate factual findings likewise infects the court of appeals' funding order respecting the quality education provisions. The court attempted somewhat to streamline this part of the settlement by reference to whether or not it found "adequate support in the record" for particular items (83-1721 Pet. App. 54a-56a). But "[b]ecause of the lack of appropriate inquiry and fact-finding below, there [was] no jurisprudentially acceptable way" for the court of appeals to determine which of these items were necessary to remedy the State's constitutional violation, and which were not (*id.* at 88a n.1 (Bowman, J., dissenting)).[9]

Faced with the absence of factual findings, the court decided to approve "those programs necessary to permit the city schools to regain, and then retain, their Class AAA status" (*id.* at 54a, 56a). But "a school classification device * * * developed by the State's Department of Education" (*id.* at 91a (Bowman, J., dissenting)) has no constitutional dimension. "Thousands of Missouri school children, over one-quarter of the total number, attend schools that lack Class AAA status" (*ibid.*). The district court made no finding that the St. Louis schools' loss of

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[9] The court of appeals, for example, upheld funding for preschool centers, improved music instruction, audio-visual services, and a "parental involvement" program (83-1721 Pet. App. 56a). But it apparently rejected funding for after-school tutoring, improved science instruction, computer literacy services, and a "student leadership" program (compare 83-1721 Pet. App. 56a with *id.* at 192a, 249a, 253a, 258a). The court did not explain why the former were "closely tailored" to remedy the State's constitutional violation, whereas the latter were not.

AAA rating was attributable to a constitutional violation by the State, or that those schools would have maintained their AAA rating in the absence of the intradistrict violation previously found. As this Court has repeatedly held, federal court decrees "exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" (*Milliken II*, 433 U.S. at 282). And the causal link between the violation and the condition sought to be remedied must be based, not on surmise, but on "the kind of factfinding by the district court and review by [the court of appeals] that *Dayton* mandates" (83-1721 Pet. App. 92a (Bowman, J., dissenting)).

c. The absence of adequate findings, finally, seriously infects the court of appeals' funding order respecting the capital improvements program. The settlement agreement did recite that the city schools were "in a severely deteriorated and sometimes dilapidated physical condition" (83-1721 Pet. App. 195a). But the district court did not find that this condition was attributable to a violation of the Equal Protection Clause, much less to a violation committed by the State. Indeed, the settlement agreement recites that the capital improvements were needed "to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process" (*id.* at 195a). In their interdistrict complaints, of course, plaintiffs alleged that the city schools' deterioration was caused in part by "discriminatory funding decisions" and by "discriminatory allocation of resources". (C.A. App. 79). But these allegations were never tried. The facts developed in a trial might show that black and white schools in St. Louis are equally dilapidated, and that this generalized condition is attributable to

voters' refusal to approve school bond issues (see 83-1721 Pet. App. 83a, 281-282a) or to the City Board's neglect of its "responsibility for maintenance of the schools' physical plant" under local law (*id.* at 83a (Gibson, J., concurring in part and dissenting in part)). In ordering the State to fund half the capital improvements in the absence of factual findings linking that remedy to the State's wrong, the court of appeals again ignored the mandate of *Dayton I*.

4. At certain points in its petition (83-1721 Pet. 11, 17, 22-23), the State apparently seeks to deduce from *Milliken I* a per se rule that a defendant can never be required to pay for desegregation relief employing interdistrict remedial techniques, even if participation in that remedial program is voluntary on the part of all others involved, unless such defendant is shown to have committed an interdistrict violation, or an intradistrict violation with interdistrict effects. This is essentially the contention that the State previously made (81-2022 Pet. 7-13) when seeking review of the order requiring it to fund the 12(a) voluntary interdistrict plan (see 677 F.2d at 630 and pages 4-7, *supra*), and certiorari on that question was denied (459 U.S. 877 (1982)).

We have already expressed our disagreement with that contention (81-2022 Br. in Opp. 8 & n.10). In our view *Milliken I* establishes no such per se rule. To be sure, once a court under *Milliken I* tailors a desegregation remedy to cure the intradistrict violation, and ascertains the cost of that remedy, that cost sets the limit of the defendant's financial liability for that violation. Consistently with *Milliken I* and *Dayton I*, however, an intradistrict violator can be ordered to fund a remedy incorporating interdistrict remedial techniques, provided (1) that participation in that program is voluntary on the part of all others

concerned, and (2) that the aggregate cost assessed against the intradistrict violator is "narrowly tailored" to—*i.e.*, does not exceed the amount appropriate to redress—the intradistrict violation shown. The error here, as discussed above (see pages 23-30, *supra*), was that the courts below made no effort thus to tailor the remedy assessed against the State.

5. The question presented is by no means unimportant. Although the choice of remedy in a school desegregation case involves factual complexities, the court of appeals' error—its failure to recognize the import of *Dayton I*, and its consequent failure to remand for the kind of factfinding *Dayton I* requires—is neither complicated to state nor difficult to correct. The Court has granted certiorari before to consider the fit between remedy and wrong in school desegregation cases, and the court of appeals' opinion suggests to us the appropriateness of revisiting that area now.

It is of course true that the question presented boils down to a question of who shall bear the cost. That question, however, is not a trifling one for the State, which will be required by the decision below to divert several hundred million dollars "from taxpayers or other competing programs (including other needy school districts) to the beneficiaries of this plan" (83-1721 Pet. App. 88a (Bowman, J., dissenting)). Our experience, both in this case and in other recent desegregation cases, suggests that racial hostility is gradually—and fortunately—diminishing as an obstacle to agreement, leaving allocation of a cost as a major, if not the most important, issue. And the allocation of costs inevitably affects the size and shape of the remedy itself, for litigants like the suburban districts here will have little hesitation in assenting to desirable programs, however unnecessary to re-

dress a prior constitutional violation, if they are not required to pay for them.

The question presented is also of importance to the United States. The St. Louis desegregation plan—particularly its reliance on voluntary measures—is in many respects a model that we would encourage others to follow, and we wish it to be a model of fairness to all concerned. While the United States is not directly affected in a monetary sense by the decisions below, the potential effect of those decisions therefore does concern us.[10]

Despite the importance of the question presented, we have some doubt whether the case warrants plenary review. If the Court agrees with us that further proceedings and factual findings are required in this case, the Court may wish to grant the State's petition (at least as to the first question presented therein),[11]

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[10] The court of appeals earlier rejected plaintiffs' contentions that the United States, although nominally an amicus curiae and later a plaintiff-intervenor, had "contributed to the segregation of the St. Louis school district" and should be required "to pay a substantial portion of the cost of integrating [it]" (667 F.2d at 647, 653-654). Although no relief was decreed directly against the United States, the government did provide "a substantial portion of the funding" for desegregation in St. Louis (see 677 F.2d at 654) through the Emergency School Aid Act, 20 U.S.C. (Supp. V) 3191, for the 1980-1981 and 1981-1982 school years. And while the United States has vigorously resisted contentions that its housing and education programs should render it liable for segregation in the schools, the depth of the government's pockets make it a tempting target for litigants and courts seeking to solve intractable problems by agreeing that each shall get everything he wants and that someone else shall pay the bill. See *United States* v. *Chicago Board of Education*, 567 F. Supp. 272 (N.D. Ill.), aff'd in part, 717 F.2d 378 (7th Cir. 1983).

[11] We believe that the second and third questions presented in the State's petition, to the extent that they raise issues not

summarily vacate the decision below, and remand for further proceedings consistent with *Dayton I*. We believe that such disposition would not endanger the prospects for a prompt and fair settlement of this litigation, and we share Judge Bowman's hope that the parties would "resume their negotiations and achieve a settlement agreement to which all could assent" (83-1721 Pet. App. 94a). Alternatively, if the Court believes that the questions presented can be treated adequately only upon full briefing and oral argument, we would not oppose that course.

6. None of the questions presented in the other two petitions merits this Court's review. The City of St. Louis, petitioner in No. 83-1386, contends that the decision below places improper restrictions on the City Board's taxing prerogatives in connection with the latter's funding obligations under the desegregation decree. Although the district court's original funding order was problematic in this respect, we think that the court of appeals fully cured the problem. It held that the district court had erred in enjoining a scheduled property tax reduction (83-1721 Pet. App. 65a-66a) and ruled that future orders affecting the City Board's tax rate should be entered only if accompanied by factual findings demonstrating their necessity (*id.* at 66a). To prevent disruption of the school system's finances, the court of appeals, in the exercise of its equitable discretion, did allow the injunction to remain in place for the balance of the 1983-1984 school year (*id.* at 60a). But the question whether that discretion was properly exercised

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previously considered by the Court in the State's earlier petitions for certiorari (see 80-2152 Pet. i, 81-2022 Pet. i, and pages 30-31, *supra*), are fairly comprised within the first question presented here.

does not merit this Court's review, particularly since the 1983-1984 school year is now over. Petitioners' challenges to the district court's authority to issue future orders affecting the City Board's tax rate (83-1386 Pet. 19-21) are premature.

The North St. Louis Parents, petitioners in No. 83-1838, are an association of black parents whose children attend public schools in North St. Louis. Their motion to intervene in the proceedings below was denied (83-1838 Pet. 3), but they filed written objections to the proposed settlement in the district court (*ibid.*). They contend that their objections were ignored (*id.* at 3-4). The district court noted that it had considered numerous oral presentations (83-1721 Pet. App. 113a-114a) and 42 written presentations (*id.* at 114a) from various individuals and groups supporting and opposing the settlement. It noted that it had "considered all statements presented by members of the public" and had concluded that "[t]he amount and type of opposition * * * [was] not overwhelming in the light of the scope and notoriety of this lawsuit" (*id.* at 114a, 115a). There is no reason to believe that the district court failed to consider petitioners' written comments.

CONCLUSION

The petitions in Nos. 83-1386 and 83-1838 should be denied. If the Court agrees with us that further proceedings and factual findings are required in this case, it may wish to grant the petition in No. 83-1721 (at least as to the first question presented therein, see pages 32-33 note 11, *supra*), summarily vacate the decision below, and remand for further proceedings consistent with *Dayton I*. Alternatively, if the Court believes that the case can be treated adequately only upon full briefing and oral argument, we would not oppose that course.

Respectfully submitted.

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